

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROL HELMS

Claimant

VS.

LINENS N THINGS

Respondent

AND

LIBERTY MUTUAL FIRE INS. CO.

Insurance Carrier

Docket No. **1,037,177**

ORDER

Respondent and its insurance carrier request review of the October 28, 2008 Order Dismissing From Regular Hearing Docket by Administrative Law Judge Marcia L. Yates Roberts.

APPEARANCES

No appearance was made by the pro se claimant. Andrew D. Wimmer of Kansas City, Missouri, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record for this review consists of the transcript of the Regular Hearing proceedings held before the Administrative Law Judge (ALJ) on July 29, 2008, together with the letters, pleadings, and other documents contained in the Division of Workers Compensation's administrative file.

ISSUES

Respondent scheduled the pre-hearing settlement conference on this claim. The pro-se claimant did not appear at the pre-hearing settlement conference. Respondent then scheduled the case for regular hearing. The pro se claimant did not appear at the regular hearing, no evidence was taken but the ALJ set terminal dates for the parties' submission

of evidence. The only presentation to the ALJ at that time were statements of respondent's counsel. On October 28, 2008, the ALJ entered an Order Dismissing From Regular Hearing Docket which provided in pertinent part that there was no evidence of due diligence to notify the claimant of the proceedings. The ALJ dismissed the matter from the regular hearing docket and set aside the terminal dates.

Respondent requested review and argues the ALJ did not have jurisdiction to remove the claim from the regular hearing docket and set aside the terminal dates. Consequently, the respondent requests the Board to deny the claim for benefits as claimant did not meet her burden of proof to establish she suffered accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

After reviewing the record, the Board finds this is an appeal from an interlocutory order which the Board is without jurisdiction to consider at this stage of the proceedings. Although entered before the final award, this is not an appeal from an order entered pursuant to the preliminary hearing statute. The appealed order resulted from a regular hearing. For the Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 44-551(i)(1). The statute grants the Board jurisdiction to review "[a]ll **final** orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge." (Emphasis added.)

The Board finds the ALJ's Order Dismissing From Regular Hearing Docket is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 44-551(i)(1). The Board concludes the Order Dismissing From Regular Hearing Docket is an interlocutory order made by the ALJ during the litigation of a worker's compensation case. It is an order the ALJ has the authority to make, during the trial process. Therefore, the Board lacks jurisdiction to review the order until it is contained in a final order or award.

Stated another way, although the proceeding was submitted for final award, after reviewing the file, the ALJ determined that the case was not ripe for final award because claimant had not been afforded due process. Accordingly, the case was taken off the regular hearing docket and terminal dates were set aside. The Board's jurisdiction to review appeals is governed by K.S.A. 44-534a and K.S.A. 44-551. Those statutes grant the Board the jurisdiction to review: (1) certain preliminary hearing findings; and, (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

AWARD

WHEREFORE, it is the decision of the Board that respondent's appeal from the Order Dismissing From Regular Hearing Docket of Administrative Law Judge Marcia L. Yates Roberts dated October 28, 2008, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of January 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carol Helms, 4641 South Rockford Avenue, Tulsa, Oklahoma 74105-4815
Andrew D. Wimmer, Attorney for Respondent and its Insurance Carrier
Marcia L. Yates Roberts, Administrative Law Judge